



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2015

Mr. Dylan A. Farmer
Counsel for the Alvin Independent School District
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2015-15955

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 574089.

The Alvin Independent School District (the "district"), which you represent, received a request for all e-mails sent to or received from four specified e-mail addresses by a named individual during a specified time period. You claim the submitted information is not subject to the Act. We have considered your argument and reviewed the submitted representative sample of information.¹

You contend the information at issue is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); see Open Records Decision No. 462 at 4 (1987). You inform us the information at issue consists of personal correspondence that has no connection with the official business of the district and which constitutes incidental use of e-mail by a district employee. You state district policy allows for incidental use of e-mail by employees and officials. You further state the use of district resources to create and maintain the information at issue was *de minimis*. See Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Based on your representations and our review of the information at issue, we find most of the information at issue does not constitute public information for purposes of section 552.002 of the Government Code. See *id.* at 4. Therefore, this information is not subject to the Act, and the district need not release it in response to this request. However, we conclude the remaining information, which we have marked, was written, produced, assembled, or maintained in connection with the transaction of official business by a district employee in her official capacity. Thus, this information is subject to the Act.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).² Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, with the exception of the information we have marked as subject to the Act, we find the information at issue is not subject to the Act, and the district need not release it in response to this request. The district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. The district must release the remaining information.³

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 574089

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a right of access to his own personal e-mail addresses in the information that is being released to him. See Gov't Code § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure). This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Thus, if the district receives another request for this same information from a person who does not have such a right of access, Open Records Decision No. 684 authorizes the district to redact this requestor's personal e-mail address without again seeking a ruling from this office.